

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTONIO LEAL and JERRY ALONZO,)	
)	
Plaintiffs,)	
)	
v.)	No.: 05 C 5744
)	
COOK COUNTY DEPUTY SHERIFFS)	JURY DEMAND
ANTHONY KOZLAR, Star No. 4948,)	
T. HOULIHAN, Star No. 3927,)	
E. MACKOWIAK, Star No. 2846 and ARTHUR)	
J. ANTHONY, Star No. 2776, Individually and)	
as employee/agents of the COOK COUNTY)	
SHERIFF'S DEPARTMENT, MICHAEL F.)	
SHEAHAN, SHERIFF OF COOK COUNTY,)	
and COOK COUNTY,)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT AT LAW

NOW COME, ANTONIO LEAL and JERRY ALONZO, by and through their attorney, JEFFREY J. NESLUND, and in complaining of the Defendants, COOK COUNTY DEPUTY SHERIFFS ANTHONY KOZLAR, Star No. 4948, T. HOULIHAN, Star No. 3927, E. MACKOWIAK, Star No. 2846 and ARTHUR J. ANTHONY, Star No. 2776, Individually and as employee/agents of the COOK COUNTY SHERIFF'S DEPARTMENT, MICHAEL F. SHEAHAN, SHERIFF OF COOK COUNTY, and COOK COUNTY, state as follows:

INTRODUCTION

1. This action is brought under 42 U.S.C. § 1083 to redress the deprivation under color of law of Plaintiffs' rights as secured by the United States Constitution. Plaintiffs seek damages stemming from the unlawful use of force against them during and after an unlawful arrest by the

DEFENDANT OFFICERS and the Plaintiffs subsequent unlawful detention and incarceration.

JURISDICTION AND VENUE

2. This Court has jurisdiction of the action under 28 U.S.C sec. 1331. Venue is proper as the Plaintiffs LEAL and ALONZO are residents of this judicial district and Defendant, COOK COUNTY, is located within the judicial district. On information and belief, the DEFENDANT OFFICERS are also residents of this judicial district. Further the events giving rise to the claims asserted here all occurred within the district.

BACKGROUND

3. On or about August 18, 2004, the DEFENDANT OFFICERS forced entry into the residence of the plaintiff LEAL, located at 4919 W. Warwick in Chicago, Cook County, Illinois.

4. The DEFENDANT OFFICERS, with their guns drawn, ordered both plaintiffs, LEAL and ALONZO, to get down on the floor.

5. The DEFENDANT OFFICERS handcuffed both plaintiffs and began a search of plaintiff LEAL's residence.

6. The DEFENDANT OFFICERS announced they had an arrest warrant for plaintiff LEAL for a domestic battery charge.

7. Plaintiff LEAL identified himself as the subject of the warrant, but the DEFENDANT OFFICERS continued to search the residence for approximately one and a half hours while both plaintiffs remained handcuffed on the floor.

8. While handcuffed on the floor, the DEFENDANT OFFICERS searched the pockets of both plaintiffs, recovered car keys and searched both plaintiffs' vehicles.

9. While the plaintiffs were handcuffed on the floor, the DEFENDANT OFFICERS

repeatedly threatened both plaintiffs, yelling, “Where’s the rest of the shit” and “take us to your guy, or your both going to jail.”

10. While the plaintiffs were handcuffed, the DEFENDANT OFFICERS summoned a canine unit to the residence of plaintiff LEAL. The DEFENDANT OFFICERS threatened both plaintiffs by bringing the search dog within inches of their faces and telling the plaintiffs, “These fangs are for you.”

11. Plaintiff LEAL was subsequently charged with possession of a controlled substance with intent to deliver and unlawful possession of a handgun. All criminal actions stemming from the above incident against plaintiff LEAL were later dropped in a manner that indicated his innocence.

12. Plaintiff ALONZO was released by the DEFENDANT OFFICERS without any charges and told, “this was your luck day.”

COUNT I

42 U.S.C. § 1983: Excessive Force

13. Plaintiffs re-allege and incorporate paragraphs 1-12 above as fully stated herein.

14. The acts of the DEFENDANT OFFICERS were a deliberate and malicious deprivation of the Plaintiffs’ constitutional rights against excessive force as guaranteed to the Plaintiffs by the Fourth Amendment of the Constitution and made applicable to the states by the Fourteenth Amendment.

15. As a result of the unreasonable and unjustifiable excessive force used by the DEFENDANT OFFICERS, the Plaintiffs suffered physical and emotional injuries, and other damages in violation of 42 U.S.C. 1983.

COUNT II
42 U.S.C. § 1983: False Arrest/Unlawful Detention

16. Plaintiffs re-allege and incorporate paragraphs 1-12 as fully stated herein.

17. As described above, DEFENDANT OFFICERS falsely arrested and unlawfully detained Plaintiffs without justification and without probable cause.

18. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others, and specifically, the rights of the plaintiffs.

19. As a result of the above-described wrongful infringement of Plaintiffs' rights, Plaintiffs suffered damages, including but not limited to mental distress and anguish.

COUNT III
State Law Claim: Malicious Prosecution

20. Plaintiffs re-allege and incorporate paragraphs 1-12 above as fully stated herein.

21. Plaintiff LEAL was improperly subjected to judicial proceedings for which there was no probable cause. These judicial proceedings were instituted and continued maliciously, resulting in injury, and all such proceedings were terminated in Plaintiff's favor in a manner indicative of innocence.

22. DEFENDANT OFFICERS accused Plaintiff LEAL of criminal activity knowing those accusations to be without probable cause, and they made written and other statements with the intent of exerting influence to institute and continue judicial proceedings.

23. Statements of DEFENDANT OFFICERS regarding Plaintiff LEAL's alleged culpability were made with knowledge that the statements were false and perjured. In so doing, the

DEFENDANT OFFICERS fabricated evidence and withheld exculpatory information.

24. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

25. As a result of the above-described wrongful infringement of Plaintiff LEAL's rights, he has suffered financial and other damages, including but not limited to substantial mental stress and anguish.

26. The misconduct described in this Count was undertaken by the DEFENDANT OFFICERS within the scope of their employment such that their employer, MICHAEL F. SHEAHAN, SHERIFF OF COOK COUNTY and COOK COUNTY, are liable for their actions.

COUNT IV

State Law claim: Indemnification

27. Plaintiffs re-allege and incorporate paragraphs 1-12 above as fully stated herein.

28. Pursuant to 745 ILCS 10/9 – 102, 55 ILCS 5/4 – 6003, and 55 ILCS 5/5 – 1106, COOK COUNTY is empowered and directed to pay any judgment for compensatory damages and any associated attorneys' fees and costs for which an independently elected Cook County Officer and his deputies acting within the scope of their employment are found liable.

29. DEFENDANT OFFICERS are or were employees of MICHAEL F. SHEAHAN, SHERIFF OF COOK COUNTY and acted within the scope of their employment in committing the misconduct described herein.

30. COOK COUNTY is obligated to provide funds to pay any judgments that may be

entered against MICHAEL F. SHEAHAN, SHERIFF OF COOK COUNTY, as a result of the misconduct of the DEFENDANT OFFICERS.

REQUEST FOR RELIEF

31. Plaintiffs, ANTONIO LEAL and JERRY ALONZO, respectfully request that the Court:

- a. Enter judgment in their favor and against Defendants, COOK COUNTY DEPUTY SHERIFFS ANTHONY KOZLAR, Star No. 4948, T. HOULIHAN, Star No. 3927, E. MACKOWIAK, Star No. 2846 and ARTHUR J. ANTHONY, Star No. 2776, Individually and as employee/agents of the COOK COUNTY SHERIFF'S DEPARTMENT, MICHAEL F. SHEAHAN, SHERIFF OF COOK COUNTY, and COOK COUNTY;
- b. Award compensatory damages against Defendants, COOK COUNTY DEPUTY SHERIFFS ANTHONY KOZLAR, Star No. 4948, T. HOULIHAN, Star No. 3927, E. MACKOWIAK, Star No. 2846 and ARTHUR J. ANTHONY, Star No. 2776, Individually and as employee/agents of the COOK COUNTY SHERIFF'S DEPARTMENT, MICHAEL F. SHEAHAN, SHERIFF OF COOK COUNTY, and COOK COUNTY;
- c. Award attorneys' fees against Defendants, COOK COUNTY DEPUTY SHERIFFS ANTHONY KOZLAR, Star No. 4948, T. HOULIHAN, Star No. 3927, E. MACKOWIAK, Star No. 2846 and ARTHUR J. ANTHONY, Star No. 2776, Individually and as employee/agents of the COOK COUNTY SHERIFF'S DEPARTMENT, MICHAEL F. SHEAHAN, SHERIFF OF COOK COUNTY, and COOK COUNTY;
- d. Award punitive damages against COOK COUNTY DEPUTY SHERIFFS ANTHONY KOZLAR, Star No. 4948, T. HOULIHAN, Star No. 3927, E. MACKOWIAK, Star No. 2846 and ARTHUR J. ANTHONY, Star No. 2776, Individually and as employee/agents of the COOK COUNTY SHERIFF'S DEPARTMENT, MICHAEL F. SHEAHAN, SHERIFF OF COOK COUNTY, and COOK COUNTY in their individual capacities; and
- e. Grant any other relief this Court deems just and appropriate.

JURY DEMAND

Plaintiffs, ANTONIO LEAL and JERRY ALONZO, demand a trial by jury under the Federal Rule of Civil Procedure 38(b) on all issues so triable.

Respectfully submitted,

/s/ Jeffrey J. Neslund
JEFFREY J. NESLUND
Attorney for Plaintiffs

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(312) 223-1100

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Defendants.)	

NOTICE OF FILING

To: A.S.A. Ronald Weidhuner
Cook County State's Attorney's Office
500 Richard J. Daley Center
Chicago, IL 60602

PLEASE TAKE NOTICE that on **March 6, 2006** the undersigned filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, **PLAINTIFFS' FIRST AMENDED COMPLAINT AT LAW**, a copy of which is served upon you herewith.

/s/ Jeffrey J. Neslund
Jeffrey J. Neslund, Attorney for Plaintiffs

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150 North Wacker Drive, Suite 2460
Chicago, Illinois 60606
(312) 223-1100

CERTIFICATE OF SERVICE

I, Jeffrey J. Neslund, Attorney at Law hereby certify that I caused to be e-filed a copy of the aforementioned document on the parties to whom said notice is directed, on the **6th** day of **March**, **2006**.

/s/ Jeffrey J. Neslund